



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO ENVIRO ORGANIC TECHNOLOGIES, INC. NO PERMIT

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Enviro Organic Technologies, Inc. regarding a sludge spill incident at the Percy D. Miller WTP, for the purpose of resolving certain violations of the State Water Control Law and the Regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "DMR" means Discharge Monitoring Report.
8. "EOT" means Enviro Organic Technologies, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. EOT is a "person" within the meaning of Va. Code § 62.1-44.3.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "O&M" means operations and maintenance.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "Permit" means VPDES Permit No. VA0002631 which was issued under the State Water Control Law and the Regulation to the City of Winchester on December 1, 2009 and which expires on November 30, 2014.
13. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
14. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner

which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are “pollution.” Va. Code § 62.1-44.3.

15. “Regulation” means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
16. “Site” means the Percy D. Miller Water Treatment Plant owned and operated by the City of Winchester, Virginia, which treats and discharges treated industrial wastewater
17. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
18. “State waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
19. “TMDL” means total maximum daily load.
20. “Winchester” or the “City” means the City of Winchester.
21. “WQS” means water quality standard.
22. “WTP” means water treatment plant.
23. “Va. Code” means the Code of Virginia (1950), as amended.
24. “VAC” means the Virginia Administrative Code.
25. “VPDES” means the Virginia Pollutant Discharge Elimination System.
26. “VRO” means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

SECTION C: The Board’s Findings of Facts and Conclusions of Law

1. EOT owns and operates a professional service corporation which offers services for organic residual management including transportation of liquid and dewatered bio-solids/residuals, beneficial use management of non-hazardous residuals including water treatment residuals, lagoon cleaning, and land application. EOT holds a permit issued by the Maryland Department of Agriculture which authorizes the company to receive and land dispose of residuals on any farm in the State of Maryland. EOT was contracted by Winchester to remove, transport and dispose the Percy D. Miller WTP lagoons sludge solids. The Percy D. Miller WTP supplies drinking water for the City and is the subject of VPDES PermitVA0002631.

2. On December 12, 2011, EOT, through its subcontractor, removed and transported a tanker load (approximately 6000 gallons) of lagoon sludge from the Site. In the process of leaving the Site, the tanker truck ran off the side of the access road and overturned, spilling sludge from the tanker.
3. On December 12, 2011, DEQ received a pollution report from Winchester regarding the spill of sludge following a truck accident at the Site which entered an unnamed tributary to the North Fork Shenandoah River. Winchester indicated that it requested EOT to initiate the cleanup of the spill. In the interim, Winchester proceeded to conduct some initial cleanup activities.

DEQ subsequently contacted EOT to inquire about its plan for the cleanup of the sludge spill; however, EOT refused to take responsibility and deferred to its subcontractor for the sludge removal project.

4. The unnamed tributary to North Fork Shenandoah River is located in the Potomac River Basin. The unnamed tributary to the North Fork Shenandoah River is not assessed in DEQ's 305(b) report. The North Fork Shenandoah River is listed in DEQ's 305 (b) report as impaired for recreational use due to E. coli contamination attributed to wildlife other than waterfowl, non-point source, and agriculture. Fish consumption is not supported due to the presence of Mercury and PCB in fish tissue. The PCB impairment is included in the EPA approved Shenandoah River PCB TMDL. This assessment unit is included in a Virginia Department of Health Fish Consumption Advisory. The assessment unit is listed as having an observed effect for aquatic life due to several years of fish mortality and disease observations and is included in a TMDL. The sources of the impairments are listed as contaminated sediment, wildlife other than waterfowl, non-point source, and agriculture.
5. On December 13, 2011, DEQ staff investigated the sludge spill at the Site. During the investigation, staff was informed that the tanker truck held 6000 gallons of sludge and that approximately 3000 gallons spilled from the tanker as a result of the accident on the access road to the Percy D. Miller WTP. Staff observed sludge solids in the stream for a distance of approximately 1300 feet downstream.
6. On December 14, 2011, based on DEQ staff's observations during the December 13th site investigation, DEQ requested that Winchester (the VPDES permit holder) provide a plan to further remove sludge from the stream and the petroleum in the ditch and diesel fuel in the gravel along the road side (later information indicated that a minimal unquantifiable amount of petroleum/diesel was spilled). Winchester indicated it would contact its contractor EOT to provide DEQ with a clean-up plan. DEQ indicated to Winchester that EOT had previously refused to take responsibility for conducting cleanup activities and deferred to its subcontractor.

7. On December 15, 2011, DEQ staff conducted a benthic survey in the stream reach impacted by the sludge spill. Staff observed a thick coating of fine sludge sediment from two to six inches deep in a stream reach of about 150 feet downstream from where the sludge spill entered the stream. No living or dead benthic organisms were observed in this reach of the stream. Further downstream only a thin coat of sludge sediment was observed. The benthic survey showed a good benthic community in this reach of the stream. DEQ staff did not observe any dead fish.
8. On January 9, 2012, EOT's subcontractor in conjunction with Winchester's consultant removed the sludge solids in the reach of stream that was most impacted by the spill.
9. On January 11, 2012, Winchester's consultant submitted a final report regarding the cleanup activities that were accomplished to remove the spilled sludge solids from the stream.
10. On April 16, 2012, VRO issued NOV No. W2012-04-V-0001 to EOT for an unauthorized discharge of approximately 3,000 gallons of sludge to an unnamed tributary to the North Fork Shenandoah River without authorization of a permit in violation of VA Code § 62.1-44.5 and 9 VAC 25-31-50 of the Regulation.
11. On May 9, 2012, DEQ met with representatives of EOT via telephone conference call to discuss the NOV and the actions that EOT took to respond to the spill. During the May 9, 2012, discussions, EOT indicated that it had initially refused to conduct the cleanup because of confusion about responsibility and not having experienced any previous spills or compliance issues. EOT also indicated that as a result of the incident, it was developing a Standard Operating Procedure for dealing with similar situations in the future.
12. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
13. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
14. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
15. The Department has issued no permits or certificates to EOT authorizing the discharge of sludge.
16. The unnamed tributary to North Fork Shenandoah River and the North Fork Shenandoah River are surface waters located wholly within the Commonwealth and are "state waters" under State Water Control Law.

17. Based on EOT's letters to DEQ, the NOV, and staff observations and file reviews, the Board concludes that EOT has violated Va. Code § 62.1-44.5, 9 VAC 25-31-50, as described in section C.
18. In order for EOT to return to compliance, DEQ staff and representatives of the EOT have agreed to the Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders EOT, and EOT agrees to:

Pay a civil charge of \$6,500 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

EOT shall include its Federal Employer Identification Number (FEIN) (51-03682444) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of EOT for good cause shown by EOT, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, EOT admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. EOT consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. EOT declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by EOT to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. EOT shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. EOT shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. EOT shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the EOT intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and EOT. Nevertheless, EOT agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. EOT petition the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to EOT.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve EOT from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by EOT and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of EOT certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind EOT to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of EOT.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Enviro Organic Technologies, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 26th day of September, 2012.



Amy T. Owens, Regional Director
Department of Environmental Quality

Consent Order
Enviro Organic Technologies, Inc.
Page 9 of 9

Enviro Organic Technologies, Inc. voluntarily agrees to the issuance of this Order.

Date: 6/13/12 By: [Signature], V.P.
(Person) (Title)
Enviro Organic Technologies, Inc.

Commonwealth of Virginia State of Maryland
City/County of Carroll

The foregoing document was signed and acknowledged before me this 13th day of June, 2012, by Philip H. Sroader who is Vice President of Enviro Organic Technologies, Inc. on behalf of the Enviro Organic Technologies, Inc.

[Signature]
Notary Public

Registration No.

My commission expires:

MICHAEL E. LIPPY
NOTARY PUBLIC STATE OF MARYLAND
CARROLL COUNTY
My Commission Expires April 01 2015

Notary seal:

